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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF OCTOBER 1998

BEFORE :

THE HON'BLE MR.JUSTICE V.GOPALA GOWDA

WRIT PETITION No.12081 & 12082 OF 1998
CONNECTED WITH
WRIT PETITION NOS.25762 & 25763 OF 1998

Between :

The Management of
Maharaja Residential Museum
Mysore Palace
Mysore
represented by
Sri Srikantadatta
Narasimharaja Wadiyar
...Petitioner in WP NO.12081-82 OF 1998
...Respondent No.1 in WP 25762-63/98

(By Sri S.V.Shastry, Advocate)

And:

1. Sri Swamy
President
Maharaja Residential Museum
Employees Union, Mysore Palace
Mysore
...R-1 in WP No.12081-82 of 1998
...Petitioner in WP 25762-63/98

(By Sri Sarat Chandra, Advocate)

2. The Presidential Officer
Labour Court
Mysore
...R-2 common in all the writ petitions

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the award passed in Reference No.32 of 1992 and 13 of 1993 dated 17-11-1997 which came into effect from 11-3-1998 at Annexure-C.

This Writ Petition is coming on for hearing this day, the Court made the following : ORDER



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ORDER

Both the Management and the workman have challenged the impugned award aggrieved by the finding recorded by the Labour Court that, the petitioner/Museum is an Industry as defined under Sec.2(j) of the Industrial Disputes Act, 1947 (in short 'the Act') and further aggrieved by the finding that workmen are entitled for reinstatement that they have completed 240 days of continuous service and they have been refused employment by the petitioner-Management is contrary to the evidence on record and law. Hence, the award passed against the Management is liable to be quashed. The grievance of the concerned workman in this case is, the Labour Court has ordered only 50% of the backwages even though they are entitled for full back wages, without assigning proper and valid reasons. Therefore, the learned counsel appearing on behalf of the workman Sri Sharath Chandra Bijai places reliance on the Judgment reported in 1997 ILR page 2500 KDCC Bank - Vs Raman Rao and another and submits that his petition is liable to be allowed.



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2. Having regard to the rival contentions urged by the learned counsel appearing on behalf of the petitioner-Management and the workman respectively, I have perused the petitions averments and the award passed by the second respondent-Labour Court. The Karnataka State in exercise of its power under Sec.10(1)(c) of the Act vide its order dated 26.4.1992 referred the points of dispute to the Labour Court, Mysore the second respondent in the Management petition with regard to the refusal of employment to the concerned workman Sri Swamy with effect from 11.3.1992 on the ground that petitioner-Management was closed and further, the refusal of employment to 19 employees whose names are mentioned in the order of reference with effect from 19.6.1992 vide Annexure-C.

3. Learned counsel Sri S.V.Shastry vehemently submits that, the provisions of the Act are not attracted to the petitioner-Management, as it is not an Industry as defined under Sec.2(j) of the Act. Therefore, the Government should not



have made a reference to the second respondent Labour Court for adjudication of the alleged existing industrial dispute between the petitioner and the concerned workmen in the dispute to it. The Labour Court, on the basis of the pleadings of the respective parties it has framed an additional issue with regard to, as to whether petitioner Management is an Industry under the provisions of the Act, and whether the provisions of the Act are attracted. On the basis of the material evidence on record both on the points of dispute as well as on the additional points of issue framed by the Labour Court on the basis of the pleadings, it has considered and answered the additional issue in favour of the workmen^m holding that, petitioner/Management is an Industry. At para.5 of the award at Annexure-C of the writ petition filed by the Management it has considered the material evidence on record and nature of business it had undertaken. With reference to evidence of the parties, it has been stated that, Management displayed photographs, paintings and antiques. The admission of the public to the museums is on payment basis. The admission fee is Rs.10/- per



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head and Rs.5/- per child. There is camel and one has to pay Rs.10/for taking a round on the camel. Camel riding is part of the activities of the Museum, MW1 Vardachar has also given evidence that the Residential Meuseum was started in 1989. Out of the income, they were making payment to the workers and maintaining the articles of the Museum.

4. I have gone through the pleading and the reasons assigned by the learned Presiding Officer of the Labour Court. I am of the considered view,

the tests laid down in Judgment of the Apex Court in case ^M ~~of~~ *Bangalore Water Supply V/S A. Rajappa reported in AIR.1978 page 578* ^M ~~of~~ *Rev. Va - (1978 SC)*

in all force are applicable to the facts of this case. The argument advanced by the learned counsel Sri S.V.Shastry that the activities of the petitioner-Management does not fall within the definition of Sec.2(j) of the Act and findings recorded by the Labour Court are erroneous in law. This submission of the learned counsel cannot be accepted in view of law declared by the Apex Court and the findings recorded by the Labour Court on the basis of material evidence on record. Hence,

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the contention in that regard is untenable in law, therefore, the same cannot be accepted by this Court.

5. In so far as other issues are concerned, the Labour Court has considered the case of the parties with regard to refusal of employment on 11.3.1992 to one of the concerned workman and refusal of employment and 19 concerned workmen with effect from 19.6.1992, it has answered the points of dispute referred to it with reference to Sec.25-FFA of the Act, it has recorded a finding that, there was refusal of employment and there was no closure. Further, there is a finding of fact that Museum was opened again on 19.6.1992. No steps are taken by the petitioner-Management to effect payment of compensation as payable under the provisions of the Act. Further, the Labour Court examined the contentions and the evidence placed on record with regard to closure with reference to Ex.W.15, it has been stated in the impugned award considering the said material documentary evidence it has come to the conclusion that, the Management would notify the retrenchment



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order seperately, no order is issued in that regard, even if it is taken that establishment was closed cannot be accepted ~~that~~ ^{not} it is closed. Further, the Labour Court ^{states} ~~says~~ that there is a presumption that establishment is not closed as there was no termination of services of the workmen separately as stated at Ex.W.15. But, however, on the basis of pleadings, the question regarding refusal of employment to the concerned workmen has been examined by the Labour Court with reference to the material evidence on record and ^{considering} ~~it is~~ the case of the petitioner-Management that, after 19.6.1992, the petitioner Management has been permanently closed in terms of Sec.2(cc) of the Act.

6. Further, the Labour Court proceeds to consider the case of the Management and the workmen and holds that, the petitioner Management should have continued the services of the concerned workmen on the same terms and conditions on which they were working till the alleged settlement was said to have been arrived at. The petitioner-Management should not have insisted



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upon the workmen to put their signatures on Ex.W.17 as they were members of the Union therefore, they were not bound by the settlement said to have been reached between the Management and the Workmen. Therefore, it proceeds to record a finding that concerned workmen refused to sign Ex.W.17 as the same was in contravention of the Act as they have not paid compensation.

7. I do not see either illegality or findings recorded by the Labour Court in the impugned Award are erroneous in law. With regard to refusal of employment to the concerned workmen, contentions urged by the parties on material evidence on record by both the parties before the Labour Court and on the basis of undisputed facts, the Labour Court has come to the conclusion that refusal of employment to the workmen was not justified by the Management. Therefore, it is not proper for this Court to re-appreciate the evidence on record to ^ucome to a different conclusion other than the conclusions reached by the Labour Court. Both the grounds urged by the

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learned counsel on behalf of the petitioner are not tenable in law and hence same cannot be accepted.

8. The greivance of the concerned workmen in their ~~connected~~ writ petitions is that, Labour Court on the basis of one sentence in the Award stating that the matter was pending for last five years before it having come to the conclusion that the Management has not justified in its action in refusal of employment to the concerned workmen^m, in view of the law laid down by the Apex Court, it should not have denied the remaining 50% of back wages as the management has not ^mmade out an exceptional circumstances to deny that portion of the back wages. The reason assigned by it is no reason in the eye of law and the same is contrary to the law declared by the Apex court and this Court referred to above. The learned counsel appearing on behalf of the petitioners/workmen in the connected writ petitions Sri Sharath Chandra Bijai vehemently submits that, refusal of employment to the workmen in the year 1992 and the Government has made reference on 24.6.1992, the




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Labour Court was required to adjudicate the dispute within three^e months which has not been done for that, the workmen should not be penalised. Having regard to the fact and the findings recorded by the Labour Court that the action of the Management in refusing employment to the concerned workmen was not justified in my considered view, the law laid down by the Apex Court that once refusal of employment or order of dismissal is required to be set aside, the natural consequences of re-instatement and awarding of ~~denial~~ of backwages would follow unless certain valid grounds are made ~~put~~ by the management for not following the normal rule~~s~~, and the Labour Court has got discretionary power in moulding the relief in awarding the backwages in certain exceptional circumstances. Further, the action of the Management was not justified and therefore the Labour Court was required to examine this relevant aspect of the case of the workmen under Sec.11A of the Act and should have granted ~~the~~ ^{of backwages} granted the relief [^] appropriately having regard to the facts and circumstances of the case.




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9. It is well settled position of law that denial of awarding backwages to the workmen by the Labour Court having come to the conclusion that refusal of employment was not justified it amounts to imposition of penalty. In my considered view, the reasons assigned by the Labour Court with regard to pendency of the dispute for 5 years for which the workmen were not reasponsible. The Management has not placed any material that workmen ~~were~~ gainfully employed from the date of refusal of employment till the date of passing of an Award and no material is placed that the petitioner-Management has been running under losses, which are relevant considerations for the Labour Court for denying a portion of wages to the workmen.

10. In this view of the matter, as the law laid down by this Court in KDCC - Vs - Rama Rao, ~~from~~ ^{another} referred to above in all force is applicable to the facts of this case. In my considered view, the Labour Court has exercised its power and granted 50% of the backwages. Having regard to the number of workmen in the case and taking into



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consideration the facts of this case, justice would be met by further awarding 25% of the backwages by modifying the award passed by the Labour Court to this extent.

11. For the reasons stated above, the writ petitions filed by the Management are required to be rejected and the writ petitions filed by the workmen are partly allowed by modifying the backwages to 75% in the place of 50% awarded by the Labour Court.

For the reasons mentioned in this order, the writ petitions filed by the Management are dismissed and the writ petitions filed by the workmen are partly allowed by modifying the Award ~~to~~ ⁱⁿ the extent of 75 per cent of back wages in the place of 50 per cent of back wages payable to the concerned workmen.



Sd/-
JUDGE